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5 Attorneys for Defendants

6 THE REGENTS OF THE UNIVERSITY OF
7 CALIFORNIA, ROBERT BIRGENEAU,
8 CONSTANCE PEPPERS CELAYA, ADAN
9 TEJADA, VICTORIA HARRISON, ALLAN
KOLLING, TOM KLATT and SUSAN VON
SEEBURG

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 CHRISTINE CHANG, individually and as
15 Guardian ad Litem for ERIC SUN,
disabled,

16 Plaintiff,

17 v.

18 ROCKRIDGE MANOR
19 CONDOMINIUM, et al.,

20 Defendants.

Case No. C-07-4005 EMC

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION OF
DEFENDANTS THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA, ROBERT
BIRGENEAU, CONSTANCE PEPPERS
CELAYA, ADAN TEJADA, VICTORIA
HARRISON, ALLAN KOLLING, TOM
KLATT AND SUSAN VON SEEBURG TO
DISMISS PURSUANT TO FRCP 12(b)(6)
OR, IN THE ALTERNATIVE, MOTION
FOR MORE DEFINITE STATEMENT
[F.R.C.P. 12(e)]**

Date: November 28, 2007

Time: 10:30 a.m.

Courtroom: C

Judge: Magistrate Judge Edward M. Chen

25 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, ROBERT BIRGENEAU,
26 CONSTANCE PEPPERS CELAYA, ADAN TEJADA, VICTORIA HARRISON, ALLAN
27 KOLLING, TOM KLATT and SUSAN VON SEEBURG hereby request that judicial notice be
28 taken of the following documents in support of their Motion to Dismiss:

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO DISMISS
C-07-4005 EMC

1 1. Plaintiffs' Complaint filed in the underlying Alameda County Superior Court
2 Action (Docket Number 2002-046048. A true and correct copy is attached hereto as Exhibit A.
3 The Court may take judicial notice of this document as it is a document filed in a federal and/or
4 state court. See Federal Rule of Evidence 201 and Holder v. Holder, 305 F. 3d 854, 866 (9th Cir.
5 2002).

6 2. Judgment entered in Alameda County Superior Court action number 2002-046048
7 on August 11, 2004. A true and correct copy is attached hereto as Exhibit B. The Court may take
8 judicial notice of this document as it is a document filed in a federal and/or state court. See
9 Federal Rule of Evidence 201 and Holder v. Holder, 305 F. 3d 854, 866 (9th Cir. 2002).

10 3. Order on Motion to Vacate/Set Aside in Alameda County Superior Court action
11 number 2002-046048 dated September 29, 2005. A true and correct copy is attached hereto as
12 Exhibit C. The Court may take judicial notice of this document as it is a document filed in a
13 federal and/or state court. See Federal Rule of Evidence 201 and Holder v. Holder, 305 F. 3d
14 854, 866 (9th Cir. 2002) and United States v. Ritchie, 342 F. 3d 903, 909 (9th Cir. 2003).

15 Dated: October 17, 2007

LOMBARDI, LOPER & CONANT, LLP

17 By: /s/ GayLynn Kim Conant
18 GAYLYNN KIRN CONANT
19 Attorneys for Defendants
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LOMBARDI, LOPER & CONANT, LLP
Lake Merritt Plaza
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Oakland, CA 94612-3541

EXHIBIT A



1696140

FILED
ALAMEDA COUNTY

APR 03 2002

CLERK OF THE SUPERIOR COURT
By R.C. Hughes Deputy

BRETT S. ALLEN, (SBN 165097)
LAW OFFICE OF BRETT S. ALLEN
909 Marina Village Parkway, #669
Alameda, CA 94501
Tel: (510) 872-9933

Attorney for Plaintiffs
Christine Chang and
Eric Sun

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED JURISDICTION

CHRISTINE CHANG and ERIC SUN

Plaintiffs,

vs.

CANDACE CELAYA, and DOES 1-30,
inclusive

Defendants.

CASE NO.: 2002-046048

COMPLAINT FOR INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS, ASSAULT AND BATTERY

Plaintiffs, CHRISTINE CHANG and ERIC SUN complain of Defendants and each
of them as follows:

GENERAL ALLEGATIONS

1. At all times relevant to this lawsuit, Plaintiffs, CHRISTINE CHANG and ERIC SUN, ("Plaintiffs") were residents of Alameda County, California.
2. Plaintiffs are informed and believe that at all times relevant to this lawsuit defendant CANDACE CELAYA was and is a natural person residing in Alameda County.
3. Defendants Does 1 through 30, inclusive, are sued herein under fictitious names because their true names and capacities, whether individual, associate,

1 corporate or governmental, are not now known to Plaintiffs. Plaintiffs are
2 informed and believe and upon such information and belief allege that each of
3 the Defendants named as a Doe is negligently or otherwise legally responsible in
4 some manner for the events herein alleged, and that said Defendants negligently
5 acted or omitted to act in one or more of their occupations and businesses and
6 that such negligence or fault proximately caused the injuries and damages
7 hereinafter set forth. Plaintiffs pray leave to insert the true names and capacities
8 of said Defendants when the same are ascertained.

9 4. At all times herein mentioned, each and every one of the Defendants
10 herein was the agent, servant and employee of each other, and each was acting
11 within the course and scope of such agency, service and employment.

12 5. At all times relevant to this lawsuit plaintiffs CHRISTINE CHANG and
13 ERIC SUN resided in unit number 314 located in the Rockridge Manor
14 Condominium complex at 2005 Pleasant Valley Avenue, Oakland, California.

15 6. At all times relevant to this lawsuit, plaintiffs are informed and believe that
16 defendant CANDACE CELAYA resided in the Rockridge Manor Condominium
17 complex located at 2005 Pleasant Valley Avenue, Oakland, California.

18 **FIRST CAUSE OF ACTION**
19 (Intentional Infliction of Emotional Distress)

20 7. On or about December 10, 2001, Defendant CELAYA, verbally threatened
21 plaintiffs with bodily injury.

22 8. Defendant's conduct as alleged here was intentional and malicious and
23 done for the purpose of causing Plaintiffs to suffer humiliation, mental anguish,
24 and emotional and physical distress.

25 9. As the proximate result of the aforementioned acts, Plaintiffs suffered
26 humiliation, mental anguish, embarrassment, shame, and emotional and physical
27 distress, and have been injured in mind and body, all to Plaintiffs's damage.

28 10. As a result of Defendant's conduct as alleged herein, Plaintiffs suffered

1 severe emotional distress according to proof at trial including but not limited to
2 humiliation, embarrassment, anguish, pain, and betrayal.

3 **SECOND CAUSE OF ACTION**
4 (Assault)

5 11. Plaintiffs incorporate herein by reference each and every allegation as set
6 forth in Paragraphs 1 through 10 above.

7 12. On or about December 10, 2001, in the laundry room located of the
8 Rockridge Manor Condominium complex located at 2005 Pleasant Valley
9 Avenue, Oakland, California, defendant CELAYA, approached plaintiffs in a
10 menacing manor, with closed fists, and stated her intention of striking plaintiffs
11 with her hands.

12 13. In doing the acts as alleged above, defendant CELAYA intended to place
13 plaintiffs in apprehension of great bodily harm.

14 14. As a result of defendant CELAYA's acts as alleged above, plaintiffs, in
15 fact, were placed in great apprehension of great bodily harm.

16 **THIRD CAUSE OF ACTION**
17 (Battery)

18 15. Plaintiffs incorporate herein by reference each and every allegation as set
19 forth in Paragraphs 1 through 14 above.

20 16. Immediately thereafter, defendant CELAYA pushed plaintiff CHANG in the
21 chest and grabbed CHANG'S neck with her hands. Defendant CELAYA then
22 repeatedly struck CHANG in the face with her fists. CHANG was able to back
23 away but defendant CELAYA once again grabbed CHANG'S neck and
24 threatened to kill her. CELAYA continued the attack by pushing CHANG against
25 the wall. Plaintiff SUN heard the noise and entered the laundry room. CELAYA
26 pushed and hit SUN in the shoulders, neck, and arm. She also scratched SUN
27 causing his finger to bleed.

28 17. In doing the acts as alleged above, defendant CELAYA acted with the

1 intent to make physical contact with both plaintiffs.

2 **SECOND AND THIRD CAUSES OF ACTION**
3 (Continued)

4 18. At no time did plaintiffs consent to any of the acts of defendant alleged in
5 the second and third causes of action, above.

6 19. As a proximate result of the acts of defendant as alleged in the second
7 and third causes of action, plaintiff CHANG suffered bruises to her neck and
8 face.

9 20. As a proximate result of the acts of defendant as alleged in the second
10 and third causes of action, plaintiff SUN suffered bruises to his shoulders and a
11 cut to his finger.

12 21. As a proximate result of the acts of defendant as alleged in the second
13 and third causes of action, plaintiffs were hurt and injured in their health,
14 strength, and activity, sustaining injuries to their persons, all of which have
15 caused, and continue to cause, plaintiffs great mental and nervous pain and
16 suffering. As a result of these injuries, plaintiffs have suffered general damages
17 in an amount to be determined at trial.

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1 22. The aforementioned conduct of defendant was willful and malicious and
2 was intended to oppress and cause injury to plaintiffs. Plaintiffs are therefore
3 entitled to an award of punitive damages.

4 WHEREFORE, Plaintiffs pray judgment as hereinafter set forth.

- 5 1. For general damages according to proof at the time of trial;
- 6 2. For costs of suit herein incurred;
- 7 3. For punitive damages; and
- 8 4. For such other and further relief as the Court deems just and
9 proper.

10 Dated: April 1, 2002

Law Office of Brett S. Allen

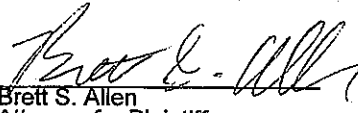
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12 Brett S. Allen
13 Attorney for Plaintiffs
14 CHRISTINE CHANG and
15 ERIC SUN
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EXHIBIT B

LAW OFFICES OF PAMELA ZIMBA
Attn: Zimba, Pamela
110 East D Street
Suite A
Benicia, CA 94510

Constance Peppers Celaya
2005 Pleasant Valley Avenue
Condo # 306
Oakland, CA 94611-____

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Chang

Plaintiff/Petitioner(s)

VS.

Celaya

Defendant/Respondent(s)

(Abbreviated Title)

No. 2002046048

JUDGMENT

Department 18

Honorable Cecilia P. Castellanos, Judge


Matter having been taken under submission, now called for decision.

IT IS ADJUDGED that the Plaintiff(s), Christine Chang; Eric Sun take nothing by this action from the Defendant(s), Constance Peppers Celaya and that said defendant(s) recover from the Plaintiff(s) \$0.00 costs. Other Condition(s) of Judgment:

This Judgment is effective 08/06/04.

This Judgment was entered on 08/11/2004

Date: 08/11/2004

By  ^{facsimile}
Judge Cecilia P. Castellanos

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: 2002046048
Judgment after Court Trial of 08/11/2004

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 08/11/2004.

Executive Officer / Clerk of the Superior Court

By

Joanne M. Horcup^{digital}

Deputy Clerk

EXHIBIT C



Constance Peppers Celaya
2005 Pleasant Valley Avenue
Condo # 306
Oakland, CA 94611-_____

LAW OFFICES OF PAMELA
ZIMBA
Attn: Zimba, Pamela
110 East D Street
Suite A
Benicia, CA 94510

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Chang	Plaintiff/Petitioner(s)
VS.	
Celaya	Defendant/Respondent(s)
	(Abbreviated Title)

No. 2002046048

Order

Motion to Vacate/Set Aside
Denied

The Motion to Vacate/Set Aside filed for Christine Chang was set for hearing on 09/16/2005 at 09:30 AM in Department 18 before the Honorable Cecilia P. Castellanos.

The matter was argued and submitted, and good cause appearing therefore,

IT IS HEREBY ORDERED THAT:

The motion of Plaintiff Christine Chang, appearing In Pro Per, for reconsideration of the final judgment is denied as untimely. (Plaintiff Eric Sun did not join in the motion). The Plaintiff's motion was not timely filed and served. The judgment in this case was filed on August 11, 2004. It was served on all parties on the same day. Both Plaintiffs were represented by counsel during and after the court trial. A motion for reconsideration under California Code of Civil Procedure section 1008 must be made within 10 days after service upon the party of the entry of the order. Plaintiff's motion was filed a year later - on August 11, 2005. Moreover, a motion for relief from a judgment under Code of Civil Procedure section 473 must be made within a reasonable time, "in no case exceeding six months after the judgment ... was taken." (Subsection [b]). In addition to the untimely nature of the motion, the Plaintiff also did not present in her motion or at the hearing any good cause for the motion to be granted on the merits.

Dated: 09/29/2005

Judge Cecilia P. Castellanos

Order

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: 2002046048
Order After Hearing Re: of 09/29/2005

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 09/29/2005.

Executive Officer / Clerk of the Superior Court

By May Chao^{digital} Deputy Clerk

DECLARATION OF SERVICE BY MAIL (CCP 1013(a), 2015.5)

On the date shown below, I served the foregoing document by depositing a true copy thereof, enclosed in a separate sealed envelope, with the postage thereon fully prepaid, in the United States mail box at 1225 Fallon Street, Oakland, CA; each of which envelopes was addressed respectively to the persons and addresses shown.

Christine Chang
341 Tideway Drive #214
Alameda, CA 94501

Pamela Zimba
Attorney at Law
110 East D Street, Suite A
Benicia, CA 94510

Constance Peppers Celaya
2005 Pleasant Valley Avenue, Condo #306
Oakland, CA 94611

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California on September 29, 2005.

By: May Choo, Deputy Clerk